IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.12 OF 2007

The Commissioner of Central Excise & Customs, Nasik. ...Appellant.

Vs.

M/s. Thyssen Krupp Electrical Steel India Limited. ...Respondent,

Mr.K.R. Choudhari with Mr. Parag Vyas and Mr. H.P.Chaturvedi for the Appellant.

Mr.P.K.Shah for the Respondent.

CORAM : F.I. REBELLO & R.S. MOHITE, JJ.
DATED : 7TH DECEMBER,2007.

PC :

1. Admit.

2. The appellant has preferred this appeal on the following questions.

A) Whether the Hon'ble CESTAT was justified in allowing the appeal of the Assesses on the decisions cited by the Appellant without discussing and verifying the issue involved therein and the issue involved in the present case is identical?

B) Whether the Assesses is entitled to avail Cenvat Credit on supplementary invoices issued for claiming compensation for short lifting of gases without receipt of the goods?

C) Whether the decisions in the case of Owens Bilt Ltd., Eveready Inds. (I) Ltd. and Kerala State Electronic Corpn. are distinguishable and are not applicable to the facts of the present case?

3. We may set out a few facts. The respondents had a contract with Inox Air Products Ltd. formerly known as Industrial Oxygen Co. Ltd. in terms of the agreement dated 12.4.1995. According to the counsel for the appellant in the event the respondents herein did not draw the agreed amount of gas, in respect of the undrawn amount, the respondents had to compensate the aforesaid Inox Air Products Ltd. The contention of the petitioners is that the price was to be adjusted in respect of the gas already drawn.

4. We have perused the order of the tribunal. We do not find that there is any finding recorded on this aspect of the matter. We also do not find that the tribunal has considered the ratio of the judgments relied on and how the same are applicable to the issues involved in this appeal.

5. In the light of that, the impugned order of the tribunal dated 27.1.2006 is set aside. Matter is

remanded back to the tribunal for fresh hearing on the contentions raised by the parties and for passing appropriate order by also considering the judgments cited before us.

6. In the circumstances, there is no order as to costs.

Appeal is disposed of accordingly.

(R.S. MOHITE, J.) **(F.I. REBELLO, J.)**